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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

NICHOLAS SANCHEZ,

Defendant and Appellant.

B268018

(Los Angeles County  
Super. Ct. No. KA042698)

APPEAL from an order of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

James Koester, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Mary Sanchez and Andrew S. Pruitt, Deputy Attorneys General, for Plaintiff and Respondent.

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On March 24, 1999, appellant Nicholas Sanchez was convicted of one felony count of receiving stolen property (Pen. Code,<sup>1</sup> § 496, subd. (a)), and was thereafter sentenced to a term of 25 years to life in state prison pursuant to the “Three Strikes” law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). On June 22, 2015, Sanchez filed a petition for resentencing pursuant to Proposition 47, the Safe Neighborhoods and Schools Act (§ 1170.18). The trial court denied the petition on the ground that Sanchez failed to meet his burden of establishing his eligibility for relief under the statute. We affirm.

## **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

### **I. The Receiving Stolen Property Conviction<sup>2</sup>**

On November 10, 1998, a Chevrolet Cheyenne pickup truck belonging to Melissa Cimicata was stolen from the underground parking lot of her apartment building. At that time, the 1990-model truck had some chipped paint, but no other damage. The following week, Armando Juarez, a friend of Sanchez, received the truck from a gang member and brought it to Sanchez’s residence so that it could be stripped for parts. Sanchez accepted the truck from Juarez, allowed Juarez to use some of his tools to

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<sup>1</sup> All further statutory references are to the Penal Code.

<sup>2</sup> The facts concerning Sanchez’s conviction for receiving stolen property are based on portions of the reporter’s transcript from his trial and this court’s prior opinion in Sanchez’s appeal from his judgment of conviction (*People v. Sanchez* (Dec. 15, 1999, B131008) [nonpub. opn.]). These documents were attached to the People’s opposition to Sanchez’s petition for resentencing and are included in the record for this appeal.

dismantle the truck, and agreed to help Juarez repair the truck's engine.

On November 19, 1998, the police searched Sanchez's residence as part of an investigation into illegally stored vehicles. During the search, officers discovered Cimicata's stolen truck, which was in an enclosed patio and in the process of being stripped. The truck's hood, front grill, radiator, engine, bumpers, and other parts had been removed and placed in a pile next to the truck. The battery cable had been cut and the steering column had been broken. During a custodial interview, Sanchez told a detective that his friend, Francisco, had brought the truck to his residence and that Sanchez had offered to rebuild the truck's engine for \$300. In a subsequent interview, however, Sanchez told the detective that he had lied in his initial statement, and that a man named Mario had brought the truck to him and asked him to remove various parts from the vehicle.

On December 23, 1998, Sanchez was charged with one felony count of receiving stolen property in violation of section 496, subdivision (a). It was alleged that Sanchez had suffered four prior serious or violent felony convictions pursuant to the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and had served one prior prison term pursuant to section 667.5, subdivision (b). On March 24, 1999, following a trial, a jury found Sanchez guilty of the receiving stolen property count, and the trial court found the prior conviction allegations to be true. On March 30, 1999, Sanchez was sentenced to a third-strike term of 25 years to life in state prison.

## **II. The Petition for Resentencing**

On June 22, 2015, Sanchez filed a petition for recall of sentence and resentencing pursuant to section 1170.18, alleging that his conviction for receiving stolen property was eligible for reduction to a misdemeanor under the newly amended section 496. The trial court denied the petition without prejudice on the grounds that Sanchez had failed to allege the value of the stolen property as required by section 1170.18, and had failed to provide proof that the petition had been served upon the People. On July 8, 2015, Sanchez filed an amended petition in which he alleged that the value of the stolen property had not been determined at his trial and “therefore is presumed to [be] under \$950 for . . . sentencing purposes.”

In an opposition filed on October 6, 2015, the People argued that Sanchez was ineligible for relief under section 1170.18 because the value of the stolen property exceeded \$950, and that even if eligibility could be shown, resentencing Sanchez would pose an unreasonable danger to public safety. The People noted that, at the time of Sanchez’s trial in 1999, the value of the stolen property was not an element of the offense under section 496, and thus, no evidence in the record directly established the value of the stolen truck received by Sanchez. The People nevertheless asserted that it was reasonable to infer from the evidence in the record that the truck’s value exceeded \$950. In support of this argument, the People noted that the victim had testified at trial that her truck was a 1990-model Chevrolet Cheyenne, and that at the time it was stolen, the only damage that the truck had sustained was some chips in the paint.

In a reply filed on October 20, 2015, Sanchez argued that the People had the burden of proving that he was ineligible for

relief under section 1170.18, and that the record of conviction contained insufficient evidence to satisfy the People's burden. Sanchez also asserted that the People's argument concerning the value of the property was improperly based on truck's condition at the time it was stolen as opposed to when Sanchez received it. According to Sanchez, his co-defendant, Juarez, testified at trial that he had paid a gang member \$50 to \$100 for the truck and had begun stripping the vehicle prior to bringing it to Sanchez to help repair the engine. Sanchez contended that such evidence reasonably could support an inference that the value of the truck was less than \$950 because it had extensive pre-existing damage at the time he received it.

At an October 20, 2015 hearing on the petition, the trial court noted that recent appellate court decisions established that the petitioner bore the burden of proving eligibility for relief under section 1170.18. In response, Sanchez's counsel argued that those cases were wrongly decided, and that even if Sanchez had the burden of proving that the value of the stolen property did not exceed \$950, he had satisfied that burden based on Juarez's testimony that he had purchased the truck for \$50 to \$100. The People argued that the value of the stolen property was based on its fair market value, and not the sales price paid by one criminal to another. The People also asserted that the truck had minimal damage at the time it was stolen, and that all of the dismantled parts had been found with the truck on Sanchez's property. The trial court determined that Sanchez was ineligible for relief under section 1170.18 because he had failed to meet his burden of proving that the value of the stolen property did not exceed \$950, and on that basis, denied the petition for resentencing.

## DISCUSSION

On appeal, Sanchez contends that the trial court committed reversible error in denying his petition for resentencing. He specifically claims that the trial court misapplied the burden of proof by requiring Sanchez to establish that he was eligible for relief under section 1170.18. He also challenges the sufficiency of the evidence supporting the trial court's ruling that Sanchez was ineligible for relief under the statute because he failed to prove that the value of the stolen property did not exceed \$950.

### I. Overview of Proposition 47

Proposition 47, which is codified in section 1170.18, “makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants.” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) Proposition 47 also includes a provision that allows certain offenders to seek recall of their sentences and resentencing. Specifically, “[u]nder section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. (§ 1170.18, subd. (a).) A person who satisfies the criteria in section 1170.18 shall have his or her sentence recalled and be ‘resentenced to a misdemeanor ... unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.’ (§ 1170.18, subd. (b).)” (*Id.* at p. 1092.)

As relevant here, Proposition 47 amended section 496, subdivision (a) such that the offense of receiving stolen property

is now a misdemeanor unless the value of the stolen property exceeds \$950. (§§ 1170.18, subds. (a) & (b), 496, subd. (a).) Thus, a defendant who was convicted of receiving stolen property prior to the passage of Proposition 47 “would be eligible for resentencing if the value of the stolen property that was the basis of his [or her] conviction under section 496, subdivision (a) did not exceed \$950.” (*People v. Perkins* (2016) 244 Cal.App.4th 129, 136.)

## **II. Sanchez Had the Initial Burden of Establishing His Eligibility for Resentencing**

Sanchez argues that the trial court applied an erroneous legal standard by requiring him prove that he was eligible for relief under section 1170.18. Sanchez asserts that, under the proper interpretation of section 1170.18, the People bore the burden of proving that Sanchez was ineligible for resentencing by establishing, based solely on the record of conviction, that the value of the stolen property received by Sanchez exceeded \$950. Sanchez’s claim, however, is contrary to settled law.

California appellate courts uniformly have held that, as the party seeking relief, the petitioner bears the initial burden of establishing his or her eligibility for resentencing under section 1170.18. This burden includes presenting evidence to establish that the value of property taken in the commission of a theft-related offense did not exceed the threshold amount of \$950. (See, e.g., *People v. Johnson* (2016) 1 Cal.App.5th 953, 962 [“petitioning defendant, not the prosecution, has the *initial* burden of establishing eligibility for resentencing, and . . . [t]his burden includes presenting *evidence* that . . . ‘the value of the property does not exceed nine hundred fifty dollars (\$950)’”]; *People v. Perkins, supra*, 244 Cal.App.4th at pp. 136, 137 [“petitioner for

resentencing under Proposition 47 must establish his or her eligibility for such resentencing,” which includes “showing the value of the property did not exceed \$950”]; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449 [under section 1170.18, petitioner “had the burden to establish ‘the facts upon which his ... eligibility [was] based[,]’ i.e., that the value of the property he took . . . did not exceed \$950”]; *People v. Sherow* (2015) 239 Cal.App.4th 875, 877 [petitioner seeking relief under section 1170.18 “had the burden to show the property loss . . . did not exceed \$950”].)

Moreover, as this court recently held, the trial court is not limited to the record of conviction in determining whether a petitioner has met his or her initial burden under section 1170.18. (*People v. Salmorin* (2016) 1 Cal.App.5th 738, 744.) Because eligibility under Proposition 47 “often turns on the simple factual question of the value of the stolen property,” and “the record may not contain sufficient evidence to determine its value,” the trial court may consider additional evidence presented by the parties in deciding whether the petitioner is entitled to relief. (*Ibid*; see also *People v. Johnson, supra*, 1 Cal.App.5th at p. 967 [“the trial court is not limited to the record of conviction in its consideration of the evidence to adjudicate eligibility for resentencing under Proposition 47”]; *People v. Perkins, supra*, 244 Cal.App.4th at p. 140, fn. 5 [petitioners seeking relief under Proposition 47 “may submit extra-record evidence probative of the value [of the stolen property] when they file their petitions for resentencing”].)

Accordingly, the trial court in this case correctly determined that Sanchez had the burden of establishing his eligibility for resentencing under section 1170.18, which included showing that the value of the property that formed the basis of his conviction for receiving stolen property did not exceed the threshold amount of



\$950. Additionally, Sanchez could not rely on a so-called “silent record” regarding the value of the stolen property to satisfy his burden, but rather had to affirmatively establish that the value did not exceed \$950, and that he was therefore eligible for relief under section 1170.18.

### **III. The Trial Court Did Not Err in Finding that Sanchez Had Failed to Satisfy His Burden of Proof**

Sanchez also challenges the sufficiency of the evidence supporting the trial court’s ruling that he was not eligible for resentencing under section 1170.18. Sanchez specifically claims that there was insufficient evidence to support the court’s finding that the value of the stolen property received by Sanchez exceeded \$950. However, that was not the finding made by the trial court in ruling on Sanchez’s petition. Rather, the trial court denied the petition on the ground that Sanchez was ineligible for relief under section 1170.18 because he failed to satisfy his burden of showing that the value of the stolen property did not exceed \$950.

Where, as here, the trier of fact has found that the party with the burden of proof did not carry the burden and that party appeals, “it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. . . . [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) “uncontradicted and unimpeached” and (2) “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.”” (*Dreyer’s Grand Ice Cream, Inc. v. County of Kern*

(2013) 218 Cal.App.4th 828, 838; accord, *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) In this case, the evidence did not compel a finding in favor of Sanchez.

The stolen property that Sanchez received was a 1990-model Chevrolet pickup truck. In his petition for resentencing, Sanchez did not present any evidence regarding the value of the truck at the time he committed the offense in 1998. Rather, in his reply brief in support of the petition, Sanchez presented evidence that his friend, Juarez, purchased the truck from a gang member for \$50 to \$100 prior to the time that Sanchez received it. While section 496 does not specify how the \$950 threshold for receiving stolen property is to be determined, section 484, which defines the crime of theft, applies a fair market value test to the value of the property taken. (§ 484, subd. (a) [“[i]n determining the value of the property obtained, for purposes of this section, the reasonable and fair market value shall be the test”]; see also *People v. Lizarraga* (1954) 122 Cal.App.2d 436, 438 [“[t]he value to be placed upon stolen articles for the purpose of establishing a felony charge is the fair market value of the property”].) The “fair market value” of a stolen item “means the highest price obtainable in the market place,” and “not the value of the property to any particular individual.” (*People v. Pena* (1977) 68 Cal.App.3d 100, 104.) Sanchez does not cite, nor are we aware of, any authority which suggests that the fair market value test should not apply in determining the value of stolen property under section 496. Under these circumstances, the trial court reasonably could find that Sanchez’s reliance on the price that his friend paid to illegally acquire the stolen truck was insufficient to satisfy his burden of showing that the value of the truck when Sanchez received it did not exceed \$950.

In his reply brief in support of the petition, Sanchez also relied on Juarez's trial testimony that he began stripping the truck prior to bringing it to Sanchez for help with repairing the truck's engine. Sanchez argued that such evidence supported an inference that the truck had extensive preexisting damage at the time he received it. However, in opposing Sanchez's petition, the prosecution presented evidence from the trial that disputed Juarez's testimony about the truck's condition. In particular, the owner of the truck testified that the only damage that the truck had sustained at the time it was stolen was minor chips in the paint. Additionally, one of the officers who recovered the truck from Sanchez's property testified that the truck was in the process of being stripped when it was found, and that all of the dismantled parts, including the hood, front grill, radiator, bumpers, and engine were also found on the property in a pile next to the truck. From this evidence, the trial court reasonably could have inferred that the eight-year-old truck was in good working condition when it was stolen and received by Sanchez and that the process of dismantling the truck did not begin until after it was received by Sanchez.

On this record, Sanchez has failed to demonstrate that the weight and character of evidence that he presented in support of his petition for resentencing was such that the trial court could not reasonably reject it. The trial court accordingly did not err in finding that Sanchez had failed to satisfy his burden of proof, and that he was ineligible for resentencing under section 1170.18.

**DISPOSITION**

The order denying the petition for resentencing is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.